

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 42.13.401, 42.13.402, and )  
42.13.404 relating to wine importation )  
and licensee reporting requirements )

TO: All Concerned Persons

1. On October 17, 2013, the department published MAR Notice Number 42-2-896 regarding the proposed amendment of the above-stated rules at page 1801 of the 2013 Montana Administrative Register, Issue Number 19.

2. On November 12, 2013, a public hearing was held to consider the proposed amendments. Abigail St. Lawrence, of the Wine Institute, and Kristi Blazer, of the Montana Beer and Wine Distributors Association, appeared and testified at the hearing. Both groups also submitted written comments. The oral and written comments received are summarized as follows, along with the department's responses:

COMMENT NO. 1: Abigail St. Lawrence, representing the Wine Institute, appeared and testified at the hearing in support of the written comments provided by Katie Jacoy, Western Counsel for the Wine Institute.

Ms. Jacoy commented that the Wine Institute is a public policy association representing 813 California wineries of all sizes and that they appreciate the opportunity to provide comments on the regulatory changes advocated in favor of House Bill 402, L. 2013. Ms. Jacoy further commented that the Wine Institute finds that the proposed rule changes comply with the intent of the statutory language and thanks the department's Liquor Control Division for all of its efforts to make the application process clear and streamlined. Ms. Jacoy added that if any issues arise with its member wineries, they hope to work with the department for acceptable resolutions.

RESPONSE NO. 1: The department thanks both Ms. St. Lawrence and Ms. Jacoy of the Wine Institute for their support of the proposed rule amendments. The department appreciates its positive working relationship with the Wine Institute and its interest in complying with Montana's alcoholic beverage laws and rules.

COMMENT NO. 2: Kristi Blazer, representing the Montana Beer and Wine Distributors Association (MBWDA), appeared and testified at the hearing and also followed up her testimony by submitting supplementary written comments. Ms. Blazer stated that the MBWDA does not have any real problem with the proposed rules, but comments that the fees charged are insufficient to support any meaningful enforcement of the law.

Ms. Blazer commented that the MBWDA originally opposed House Bill 402, but then took a sideline position, only because the amount of wine currently being

directly shipped to consumers in the United States seemed like a small amount. In Europe and possibly other countries, the percentage of wine purchased through direct shipment is greater. With more and more consumers turning to the Internet, the percentage of direct shipment of wine in the United States could increase.

Ms. Blazer stated that the MBWDA takes very seriously the role of assisting the department with regulation enforcement and firmly believes that a strong three-tier system of distribution for both beer and wine is the best possible means of assuring that alcohol laws are obeyed and enforced. The MBWDA also believes that alcohol is a unique product and must be regulated; it is quite different to order a bottle of wine over the Internet than to order a DVD or a book because alcohol has the potential to be used in a way that often harms society.

Ms. Blazer commented that the MBWDA remains concerned that the new system of direct shipment of wine to consumers is on the "honor system," and is largely unenforceable. While apparently the system called the connoisseur's license was not perhaps being enforced, that system at least had some checks and balances should enforcement become necessary. For example, records of wineries and connoisseurs could be cross-checked and any inconsistencies could result in an audit.

Ms. Blazer stated that, with respect to the proposed regulatory changes, the MBWDA is hopeful that this is only a start and that additional rules will be proposed to add some measure of enforceability to the law. To that end, the MBWDA has sent an e-mail question to other beer and wine distributor associations in states that allow direct shipment for the purpose of gathering all ideas as to what, if anything, has worked in other states, to aid in the enforcement of direct shipment laws, such as checking on licensure of wineries, checking for the direct shipment endorsement to see that limits on amounts of wine are being followed, checking to see that the age 21 restrictions are strongly enforced, and checking to see that state alcohol taxes are paid by the participating wineries. When the MBWDA obtains any helpful information, it will be shared with the department in an effort to make the direct shipment law more enforceable.

Ms. Blazer commented that the MBWDA appreciates the good work of the department and this opportunity to comment, and stated that the department has always listened to the concerns of the MBWDA and that they look forward to working together again on this important project.

RESPONSE NO. 2: The department thanks Ms. Blazer for attending the hearing and for providing additional written comments.

Ms. Blazer's concern that the fees charged are insufficient to properly enforce the law is noted. House Bill 402 specifically created the direct shipment endorsement for a cost of \$50 per winery. The department is unable to collect any additional fees above what is allowed by statute.

Ms. Blazer states that the MBWDA is concerned that the direct shipment of wine to consumers is largely unenforceable and on the honor system. The department understands this concern. The department is encouraged by the number of wineries that have already applied for the direct shipment endorsement. More than 300 wineries have applied and are required to monthly report their shipments of table wine to consumers. The department is actively seeking

additional ways to educate the industry on the alcoholic beverage laws and rules within Montana. Together with partners such as the Wine Institute and the MBWDA, the department is confident that the industry will abide by the new legislation.

Ms. Blazer further states that the MBWDA is currently researching other states that allow the direct shipment of wine to consumers to learn about the enforcement efforts conducted in those states. The department appreciates the MBWDA's interest and thoroughness on the subject and would consider any information the association is able to provide.

The department thanks Ms. Blazer and the MBWDA for their belief in the three-tier system. The department values the relationship it has with the MBWDA and looks forward to working with them on any future concerns.

3. As presented at the hearing, in order to include a reference to areas that table wine cannot be directly shipped to due to local ordinances, the department is further amending ARM 42.13.401 as follows, new matter underlined:

42.13.401 IMPORTATION OF WINE (1) through (4) remain as proposed.

(5) A winery must comply with all laws of the United States, Montana, Tribes, and local jurisdictions pertaining to the sale and shipment of alcoholic beverages, and may not ship table wine to any address in Montana where local or Tribal law prohibits the purchase or receipt of alcoholic beverages.

(5) remains as proposed, but is renumbered (6).

4. Therefore, the department amends ARM 42.13.401 as shown above and amends ARM 42.13.402 and 42.13.404 as proposed.

5. An electronic copy of this notice is available on the department's web site, [revenue.mt.gov](http://revenue.mt.gov). In the left hand column under Quick Links, select "Laws and Rules," then "Rules" and then "Adoption Notices." The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Laurie Logan  
LAURIE LOGAN  
Rule Reviewer

/s/ Mike Kadas  
MIKE KADAS  
Director of Revenue

Certified to Secretary of State December 2, 2013